IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3088 OF 2023

SK. ENAMUL HOSSAIN

VS

THE STATE OF WEST BENGAL

For the Petitioners : Mr. Aniket Mitra, Adv.

Mr. Argha Banerjee, Adv.

Ms. Nanadini Chatterjee, Adv.

For the State : Mr. Debasish Roy, Adv.

Md. Anwar Hossain, Adv.

Ms. Ratna Ghosh, Adv.

For the

Income Tax Department : Mr. Prithu Dudhoria, Adv.

Last heard on : 24.11.2025

Judgement on : 04.02.2026

Uploaded on : 04.02.2026

CHAITALI CHATTERJEE DAS, J. :-

1. This is an application under Section 482 of the Code of Criminal Procedure 1973, filed by the present petitioner for quashing of G.R. case no. 382 of

2023 pending before the Learned Additional Chief Judicial Magistrate Datan, Paschim Medinipur arising out of Datan Police Station Case No. 161 of 2023 dated April 10, 2023 under Section 379/411/34 of the Indian Penal Code.

Case of the petitioner

2. The petitioner works as a daily labour and is an inhabitant of the locality where he resides, having an unblemished record. A complaint has been filed before the Datan Police Station by ASI Debasish Sarkar alleging that on April 9, 2023 while performing night mobile duty within Datan Police Station jurisdiction on receiving a telephonic intimation about carrying huge stolen cash by somebody in a blue colour Bolero vehicle entering into West Bengal border through Jaleswar to Baipatna Road and as per instruction of the ASI Mr. Mrinal kanti Deb,with a force rushed to Patnaka Naka point and at about 40.5 hours said blue colour Bolero was found coming with excessive speed and when stopped and searched other 4 persons ran away from the spot. They found Rs. 15, 96,000/- from the present petitioner and estimated such as stolen amount and accordingly lodged the complaint and the petitioner was arrested. On the basis of the same the Datan Police case started under Section 379, 411 and 34 of the Indian Penal Code and on completion of investigation submitted the charge sheet though his cousin claimed to be the owner of the amount recovered from the petitioner .Hence this revisional application has been filed .

Submissions

3. The Learned Advocate appearing on behalf of the petitioner submits that the petitioner is totally innocent and has been falsely implicated in the present case. In course of proceeding the petitioner was produced before the Learned Court of Chief Judicial Magistrate but his prayer for bail was rejected. It is the submission of the Learned Advocate that there is nothing in the FIR which remotely suggest that the petitioner had ever theft any amount from anyone .The stand taken by the petitioner that his cousin brother who was a manufacturer of gold and silver jewelleries ,precious base metal and semi-precious stones, handed over the said amount to him. The said cousin of the petitioner namely Sk. Nur Alam decided to construct a house and hence called the petitioner and gave the said amount with-drawing the same from ICCI Bank Omkar, Chandi Road,Orissa,Cuttack for constructing the said house. Therefore there is no question of theft arises.

4. The Learned Prosecution raises objection and submits that no satisfactory reply could be given to the investigating authority by the petitioner regarding possessing such huge amount of cash. Pursuant to the order passed by the co-ordinate Bench of this Court on December 7, 2023 the present Opposite Party No. 3 was added and the present petitioner were summoned and interrogated by the Income Tax Department where their statement was recorded under Section 131 of the Income Tax, 1961.Pursuant to the direction of the co-ordinate Bench on June 27, 2024 he appeared before the Investigating authority on July 6, 2024. He duly complied with the notice for appearance served on him and he was interrogated.

The supplementary affidavit on behalf of the Opposite Party no. 3 Sk. Nur Alam was also arraigned as an accused after he claimed the ownership of the said amount and his version should be tested only after conclusion of investigation and in course of trial.

5. Opposite Party no, 3 filed the supplementary Affidavit and claimed to be the actual owner of the seized money of Rs.15, 96,000/- beings the cousin brother of the present petitioner. He also filed an application before the Learned Court of ACJM, Datan, Paschim Medinipur praying for return of the seized cash and direction was given to the Officer-in-charge Datan police Station by the Learned Court to conduct an enquiry and to submit a report with regard to the seized cash. The Opposite Party no. 3 further stated that he withdrew the cash for the purpose of sending the same to his father his native place at Bhadua , Doba Para, Hooghly for the purpose of his ongoing construction work. He handed over the said the amount to his cousin brother to hand over the same to his father. He claimed to be a goldsmith

6. The Learned Advocate representing the Income Tax Department who has been added pursuant to the direction of the co-ordinate Bench dated September 20, 2023 disclosed that the matter related to seizure of cash/valuable by police and there are settled norms for communication from police authority to the Income Tax Department. It is submitted by the Learned Advocate that a Sum of Rs. 15, 96,000/- was seized from the possession of the present petitioner on April 10, 2023 by Datan Police Station and the case was also registered. The said information was shared almost after 5 months by the Inspector of Police DEB Paschim Medinipuur vide his later dated September 1, 2023 to the Income Tax Officer ward 39 when in terms of the existing norms the same should be shared with the Principal Director of Income Tax (investigation) Calcutta. Subsequently Income Tax Officer ward 39 (1) (Medinipur) vide his later dated October 4, 2023 shared information with the Director General of Income Tax. After receiving the same a notice under Section 131 of the Income Tax Act 1961 was issued to the petitioner for providing explanation regarding the source of cash found and seized from his possession however no compliance was made.

7. The present petitioner also filed his exception to the said report filed by Income Tax department whereby it was specifically assailed that he filed the bank's statement of Nur Alam showing withdrawal of cash on instalment from ICICI Bank for the period from January 2023-March 2023 and also his audited accounts and report and account of financial year 2021 -2032 and assessment year 2022-2023. He also made further representation to the Officer-in-Charge Datan Police Station with a copy to the Superintendent of Police explaining the source of the seized cash in order to show that the cash seized by investigating agency is not a stolen property.

Analysis

8. Having heard both the Learned Advocated primarily it can be found that the allegation levelled against the present petitioner pertains to possessing of an amount of Rs. 15,96,000/- and the same was found on inspecting the Bolero vehicle by the inspector of Police Datan, DEB Paschim Medinipur after having a source information. Initially it can be seen that notice under Section 41A was not served upon the petitioner. The said fact was recorded by the Learned Judicial Magistrate , in the order dated April 17, 23 when ASI Debasish Sarkar was directed to appear for submitting an explanation as to why no such notice was served before assessing the accused person. The interesting aspect of the matter is that the petitioner was arrested with the said amount of cash on suspicion that such amount is a stolen cash.

During investigation the investigating authority came to learn from the statement of the accused person that the seized amount was delivered to him by his cousin named Sk. Nur Alam on April 9, 2003 to carry secretly to the father of the Nur Islam for the purpose of construction of a house. It can be further found that said Nur Islam also subsequently interrogated who claimed the ownership of the said amount and also that he handed over the same to the petitioner who happened to his cousin for handing over the same to the father of the Nur Islam The said Nur Islam is also arraigned as an accused as the Investigating Authority was not satisfied about the source of the said amount.

9. The pertinent question falls for adjudication is that, the case was started under Section 379, 411/34 IPC which is at all maintainable in view of subsequent development. Section 379 Indian Penal Code relates to the offence of theft committed and the punishment for commission of such offence. This provision of the Indian Penal Code defines theft which is as follows: --

379-Theft as dishonestly taking movable property out of someone's possession without consent and moving it, with punishment up to 3 years imprisonment or fine.

The key elements for proving theft includes dishonest intention, taking a movable item removing it from another's possession and movement. Therefore the essential criteria is taking out movable property from someone's possession without consent.

In the instant case since the cousin Nur Alam after appearing before the Investigating Officers claimed the ownership of the said cash amount and also that the said amount was withdrawn from ICCI Bank along with the necessary papers and claimed to have a business of jewellery. So primarily there remains no ingredients to attract 379 IPC against the petitioner since the amount cannot be further said to be stolen by the accused. Whether the source of amount has been satisfactorily explained by said Nur Alam cannot have any semblance on the charge levelled against the petitioner under Section 379 IPC

10. Said Nur Alam is arraigned as a accused on suspicion that the Investigating Authorities were satisfied about the source of the said amount which that is a different aspect and for that reason the separate provisions are there which at any cost cannot be defined under the fore-corners of the definition of theft against the present petitioner.

11. In the decision relied upon by the petitioner ***Naresh Anbeja @ Nar kumar Aleja vs State of Uttar Pradesh and another***[1] the sole question was considered was whether the charges levelled against the accused ex facie made out from the record ,thereby justifies the High Court's refusal to quash the proceeding by invoking power under Section 482 Cr.P.C . The Hon'ble Court reiterated that the Court cannot conduct a mini trial but to be satisfied that prima facie the offences are made out or to put it differently ,without undertaking a minute examination on the record that there is some substance in the allegations cannot which could meet the threshold of statutory note.

[1] (2025) 2 SCC 604

12. In the much celebrated decision of ***State of Haryana vs. Bhajanlal***[2] where the parameters were mentioned for exercising power by the High Court under Section 482 of Cr.P.C for quashing the FIR which are as follows ;

" (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion

[2] 1992 Supp 10 SCC 335

that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. "

13. In the decision relied upon by the Learned Advocate of the Income Tax Department of the High Court of Gujrat at Ahmedabad. In Criminal misc. Application no. 5922 of 2009 and Criminal Revision application no. 206 of 2009 **(*Deputy Director of Income Tax Investigation) vs. State of Gujrat & Anr.*** it was observed that scope of enquiry under section 451 of the Code of Criminal Procedure and Section 132 of the Act are quite different. In view of Section 132 of the Income Tax Act it shall be the duty of the Police Authority to comply with the requisition issued by the authorised Officer Department. The Police Authority has no power to retain the muddammal or hand it over to the respondent no. 2 / the de-facto complainant. It was held that it was incumbent upon him to hand over muddammal to the department for completion of proceedings investigated by it. By not complying with the requisition a grave illegality has been committed by the concerned Police Officer.

In the instant case also it can be transpired that after such seizure of the cash amount immediately no intimation was given to the Deputy Director of the Income tax Department/ DIG of the Income Tax Department and more so the said amount is still under the custody of the Investigating authority.

Conclusion

14. Therefore in view of the facts and circumstances there remains no doubt to arrive at such a conclusion by this Court that no iota of the material exist to attract 379 of the Indian Penal Code against the present petitioner from whom such amount was seized. Section 411 of the Indian Penal Code also deals with the offence of dishonestly receiving the stolen property and in terms of the relevant provision the act must involve dishonesty taking or the item and the property kept must be proven to be stolen. The key aspect of Section 411 IPC is whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property shall be punished .Therefore to establish the liability it must be proven that the property was stolen and the accused was in possession of it and the accused knew or had the reason to believe it was stolen.

15. In the instant case as it is evident that the charge for stealing the amount could not be substantiated since the ownership of the cash was specifically claimed by a person who has also been arraigned as an accused, so prima facie case in favour of the petitioner cannot be said to be well constituted since by no stretch of imagination it can be said that the cash amount was stolen by the petitioner or he received any stolen amount dishonestly.

16. Hence this Court is of the view the complaint itself prima facie do not constitute any offence to attract any of the offences as alleged and therefore there is no reason to allow to continue the proceeding against the present petitioner. Hence the proceeding pending before the Learned Court stands quashed against the present petitioner.

17. Accordingly this Criminal Revisional application is hereby allowed.

18. No order as to cost.

19. Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS,J.)